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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2015-0028]

Emerald Ash Borer; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the emerald ash borer regulations by adding areas in the States of Arkansas, Colorado, Georgia, Kansas, Maryland, Minnesota, New Hampshire, North Carolina, Tennessee, Wisconsin, and the District of Columbia to the list of quarantined areas. In addition, we are adding the States of Connecticut, Iowa, Kentucky, Massachusetts, Missouri, New York, Pennsylvania, and Virginia in their entirety to the list of quarantined areas. This action is necessary to prevent the spread of emerald ash borer into noninfested areas of the United States.

DATES: This interim rule is effective [Insert date of publication in the Federal Register]. We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0028>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2015-0028, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0028> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Chaloux, National Policy Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1231; (301) 851-2064.

SUPPLEMENTARY INFORMATION:

Background

Emerald ash borer (EAB), Agrilus planipennis, is an invasive wood-boring beetle from Asia threatening the ash trees (Fraxinus spp.) of the United States. EAB larvae feed on ash phloem, cutting off the movement of resources within the tree and killing the tree within 4 to 5 years. EAB is able to attack and kill healthy trees in both natural and urban environments and is well suited for climate conditions in the continental United States.

The regulations in “Subpart Emerald Ash Borer” (7 CFR 301.53-1 through 301.53-9, referred to below as the regulations) restrict the interstate movement of certain regulated articles

from quarantined areas in order to prevent the spread of EAB into noninfested areas of the United States.

The regulations in § 301.53-3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, in which EAB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which EAB has been found. The regulations further provide that less than an entire State will be designated as a quarantined area only if the Administrator determines that:

- The State has adopted and is enforcing a quarantined area and regulations that impose restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of those articles; and
- The designation of less than the entire State as a quarantined area will otherwise be adequate to prevent the artificial interstate spread of EAB.

Based on these criteria, APHIS issues Federal Orders to immediately restrict the interstate movement of regulated articles for EAB from areas designated as quarantined areas. After a Federal Order is issued, APHIS publishes a document in the Federal Register to update the regulations to reflect the changes made by the Federal Order. The last update to the regulations was published in May 2010. Since then, APHIS has issued several Federal Orders for EAB that designate areas in the States of Arkansas, Colorado, Georgia, Kansas, Maryland, Minnesota, New Hampshire, North Carolina, Tennessee, Wisconsin, and the District of Columbia to the list of quarantined areas and the States of Connecticut, Iowa, Kentucky,

Massachusetts, Missouri, New York, Pennsylvania, and Virginia in their entirety as quarantined areas.¹ As a result, our regulations have become outdated.

Therefore, in accordance with the criteria described above, we are amending § 301.53-3 by adding areas in the States of Arkansas, Colorado, Georgia, Kansas, Maryland, Minnesota, New Hampshire, North Carolina, Tennessee, Wisconsin, and the District of Columbia and the States of Connecticut, Iowa, Kentucky, Massachusetts, Missouri, New York, Pennsylvania, and Virginia in their entirety to the list of quarantined areas for EAB. As a result of this rule, the interstate movement of regulated articles from these areas will be restricted. A full list of the areas we are adding to the regulations is provided in the regulatory text at the end of this document.

Emergency Action

The rulemaking is necessary on an emergency basis to prevent the spread of EAB to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the Federal Register.

We will consider comments we receive during the comment period for this interim rule (see DATES above). After the comment period closes, we will publish another document in the Federal Register. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

¹ To review the Federal Orders issued for EAB, go to http://www.aphis.usda.gov/planthealth/eab_quarantine.

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. The full analysis may be viewed on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov) or obtained from the person listed under FOR FURTHER INFORMATION CONTACT.

The States added, either partially or entirely, to the list of EAB regulated areas include about 51 percent of U.S. sawmills, 46 percent of wood container and pallet manufacturing establishments, 53 percent of landscaping services, 36 percent of nursery and garden centers, 34 percent of recreational vehicles parks and campgrounds, 37 percent of logging operations, and 36 percent of forest nurseries.

Based on our review of available information, APHIS does not expect the interim rule to have a significant economic impact on small entities. Affected industries in the quarantined areas we are adding to the regulations are already operating under EAB quarantine restrictions imposed by Federal Orders. In the absence of significant economic impacts, we have not identified alternatives that would minimize such impacts.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301--DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.53-3, paragraph (c) is amended as follows:

a. In the entries for Maryland, Minnesota, and Wisconsin, by adding new counties in alphabetical order.

b. By revising the entries for Kentucky, Missouri, New York, Pennsylvania, and Virginia.

c. By adding, in alphabetical order, entries for Arkansas, Colorado, Connecticut, District of Columbia, Georgia, Iowa, Kansas, Massachusetts, New Hampshire, North Carolina, and Tennessee.

The revisions and additions read as follows:

§ 301.53-3 Quarantined areas.

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(c) * * *

Arkansas

Ashley County. The entire county.

Bradley County. The entire county.

Calhoun County. The entire county.

Clark County. The entire county.

Cleveland County. The entire county.

Columbia County. The entire county.

Dallas County. The entire county.

Drew County. The entire county.

Garland County. The entire county.

Grant County. The entire county.

Hempstead County. The entire county.

Hot Spring County. The entire county.

Howard County. The entire county.

Jefferson County. The entire county.

Lafayette County. The entire county.

Lincoln County. The entire county.

Little River County. The entire county.

Miller County. The entire county.

Montgomery County. The entire county.

Nevada County. The entire county.

Ouachita County. The entire county.

Pike County. The entire county.

Saline County. The entire county.

Sevier County. The entire county.

Union County. The entire county.

Colorado

Boulder County. The entire county.

Boulder County/Larimer County. The 15 acre property at 8200 Highway 7 on the Boulder County/Larimer County line.

Jefferson County. The portion of Jefferson County that is bounded by a line starting at the Boulder County line proceeding south along the west side of CO-93 to West 80th Avenue; then east on W. 80th Avenue (Lyden Road) to the Northwest Boundary marker of Pettridge Park; then northeast from the Pettridge Park boundary marker, crossing W. 80th Avenue, to the east fence line, crossing the riparian area, and east wind fence of the landfill; then north along the east fence line of the power generation facility; then north, crossing the railroad tracks, following the fence and power lines to CO-72 (Coal Creek Hwy); then north, crossing CO-72, following the power line along the west side of the cell tower site to the Southwest Boundary marker of Department of Interior, U.S. Fish

and Wildlife Service, Rocky Flats National Wildlife Refuge (RFNWR); continuing north along the west fence line of RFNWR to the east fence line of National Renewable Energy Laboratory, Wind Technology Center to CO-128 (West 120th Avenue) to the Boulder County line.

Weld County. The Township of Erie.

Connecticut

The entire State.

District of Columbia

The entire district.

Georgia

Clayton County. The entire county.

Cobb County. The entire county.

DeKalb County. The entire county.

Fayette County. The entire county.

Fulton County. The entire county.

Gwinnett County. The entire county.

Henry County. The entire county.

Newton County. The entire county.

Rockdale County. The entire county.

Walton County. The entire county.

Whitfield County. The entire county.

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Iowa

The entire State.

Kansas

Johnson County. The entire county.

Leavenworth County. The entire county.

Wyandotte County. The entire county.

Kentucky

The entire State.

Maryland

Allegany County. The entire county.

Anne Arundel County. The entire county.

Baltimore City. The entire city.

Baltimore County. The entire county.

Calvert County. The entire county.

Carroll County. The entire county.

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Fredrick County. The entire county.

Garrett County. The entire county.

Harford County. The entire county.

Howard County. The entire county.

Montgomery County. The entire county.

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Saint Mary's County. The entire county.

Washington County. The entire county.

Massachusetts

The entire State.

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Minnesota

Dakota County. The entire county.

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Olmsted County. The entire county.

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Winona County. The entire county.

Missouri

The entire State.

New Hampshire

Hillsborough County. The entire county.

Merrimack County. The entire county.

Rockingham County. The entire county.

New York

The entire State.

North Carolina

Granville County. The entire county.

Person County. The entire county.

Vance County. The entire county.

Warren County. The entire county.

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Pennsylvania

The entire State.

Tennessee

Anderson County. The entire county.

Blount County. The entire county.

Bradley County. The entire county.

Campbell County. The entire county.

Carter County. The entire county.

Claiborne County. The entire county.

Clay County. The entire county.

Cocke County. The entire county.

Davidson County. The entire county.

Fentress County. The entire county.

Grainger County. The entire county.

Greene County. The entire county.

Hamblen County. The entire county.

Hamilton County. The entire county.

Hancock County. The entire county.

Hawkins County. The entire county.

Jackson County. The entire county.

Jefferson County. The entire county.

Johnson County. The entire county.

Knox County. The entire county.

Loudon County. The entire county.

Macon County. The entire county.

McMinn County. The entire county.

Meigs County. The entire county.

Monroe County. The entire county.

Morgan County. The entire county.

Overton County. The entire county.

Pickett County. The entire county.

Polk County. The entire county.

Putnam County. The entire county.

Rhea County. The entire county.

Roane County. The entire county.

Scott County. The entire county.

Sevier County. The entire county.

Smith County. The entire county.

Sullivan County. The entire county.

Unicoi County. The entire county.

Union County. The entire county.

Washington County. The entire county.

Virginia

The entire State.

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Wisconsin

Adams County. The entire county.

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Buffalo County. The entire county.

Calumet County. The entire county.

Columbia County. The entire county.

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Dane County. The entire county.

Dodge County. The entire county.

Door County. The entire county.

Douglas County. The entire county.

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Grant County. The entire county.

Iowa County. The entire county.

Jackson County. The entire county.

Juneau County. The entire county.

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Kewaunee County. The entire county.

La Crosse County. The entire county.

Lafayette County. The entire county.

Manitowoc County. The entire county.

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Monroe County. The entire county.

Oneida County. The entire county.

Oneida Indian Reservation. The entire reservation.

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Richland County. The entire county.

Rock County. The entire county.

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Trempealeau County. The entire county.

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Walworth County. The entire county.

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Winnebago County. The entire county.

Done in Washington, DC, this 15th day of July 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015-17847 Filed: 7/20/2015 08:45 am; Publication Date: 7/21/2015]